

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>HEIDIE L. GODINEZ</b>	)	
Claimant	)	
VS.	)	
	)	
<b>WAL-MART WHSE</b>	)	
Respondent	)	Docket No. 264,054
	)	
AND	)	
	)	
<b>AMERICAN HOME ASSURANCE</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent and its insurance carrier appeal from an Award entered by then Administrative Law Judge Julie A. N. Sample on February 28, 2003. Oral arguments were presented to the Appeals Board (Board) on August 20, 2003. Julie A. N. Sample, who is now a member of the Board recused herself from this proceeding and Stacy Parkinson was appointed Appeals Board Member Pro Tem to serve in her place.

**APPEARANCES**

Michael C. Helbert of Emporia, Kansas, appeared for the claimant. James B. Biggs of Topeka, Kansas, appeared for the respondent and its insurance carrier.

**RECORD AND STIPULATION**

The Board considered the record and adopts the stipulations that are listed in the Award.

### ISSUES

The ALJ found that claimant suffered a compensable injury to her hips and low back areas by a series of accidents ending June 2001. Claimant was awarded permanent partial disability compensation based upon the uncontroverted eight (8) percent functional impairment rating given by board certified orthopedic surgeon Edward J. Prostic, M.D.

Respondent and its insurance carrier contend the ending date for claimant's series of accidents should be January 12, 2001, and based upon that date claimant failed to give timely notice of her accidents.

Conversely, claimant contends that the ALJ's Award should be affirmed in all respects.

Although identified as issues in their Application for Review by Workers' Compensation Board and the Brief of Respondent and Insurance Carrier, the nature and extent of claimant's disability and the issues concerning Dr. Prostic's rating, were withdrawn by counsel for respondent and its insurance carrier during oral argument to the Board. Accordingly, the date of claimant's accident and whether claimant gave timely notice are the only issues for the Board's review.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Following the creation of the bright line rule in the 1994 *Berry*<sup>1</sup> decision, our appellate courts have grappled with determining the date of accident for repetitive use injuries. In *Treaster*,<sup>2</sup> the Kansas Supreme Court approved the principles set forth in *Berry*, in which the Kansas Court of Appeals held that the date of accident for a repetitive trauma injury is the last day worked when the worker leaves work because of the injury. The Kansas Supreme Court further held in *Treaster* that the appropriate date of accident for injuries caused by repetitive use or micro-traumas (which this is) is the last date that a worker (1) performs services or work for an employer or (2) is unable to continue a particular job and moves to an accommodated position. As such, *Treaster* focuses upon the offending work activity that caused the worker's injury as it holds that the appropriate date of accident for a repetitive use or micro-trauma injury should be the last date that the worker performed his or her usual work duties, whether the worker stops because the employment ceases or, instead, is moved to a substantially different accommodated position.

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<sup>1</sup> *Berry v. Boeing Military Airplanes*, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994).

<sup>2</sup> *Treaster v. Dillon Companies, Inc.*, 267 Kan. 610, 987 P.2d 325 (1999).

Because of the complexities of determining the date of injury in a repetitive use injury, a carpal tunnel syndrome, or a micro-trauma case that is the direct result of claimant's continued pain and suffering, the process is simplified and made more certain if the date from which compensation flows is the last date that a claimant performs services or work for his or her employer or is unable to continue a particular job and moves to an accommodated position.<sup>3</sup>

Where an accommodated position is offered and accepted that is not substantially the same as the previous position the claimant occupied, the date of accident or occurrence in a repetitive use injury, a carpal tunnel syndrome, or a micro-trauma case is the last day the claimant performed the earlier work tasks.<sup>4</sup>

In this case, claimant last performed her regular job duties for respondent in June 2001. Accordingly, June 2001 will be utilized as the accident date for claimant's series of accidents. Based on this accident date there is no question but that respondent was given repeated notice of claimant's ongoing work-related aggravations. Furthermore, based upon a June 2001 accident date, claimant's Application for Hearing filed February 19, 2001 constituted timely notice and written claim.<sup>5</sup>

The Board finds that the ALJ's Award should be affirmed. The Board agrees with the analysis of the evidence and law as set forth in the Award and adopts the ALJ's findings, conclusions and orders as its own.

#### **Award**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Julie A. N. Sample dated February 28, 2003, should be, and is hereby affirmed.

**IT IS SO ORDERED.**

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<sup>3</sup> *Id.* at Syl. ¶ 3.

<sup>4</sup> *Id.* at Syl. ¶ 4.

<sup>5</sup> K.S.A. 44-520; K.S.A. 44-520a.

Dated this \_\_\_\_\_ day of August 2003.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Michael C. Helbert, Attorney for Claimant  
James B. Biggs, Attorney for Respondent and American Home Assurance Inc. Co.  
Paula S. Greathouse, Workers Compensation Director